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[G.R. Nos. 135201-02, March 15, 2001]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FLORENCIO FRANCISCO Y ALEJO, ACCUSED-APPELLANT.

D E C I S I O N

BELLOSILLO, J.:

On automatic review is the *Joint Decision* of the court *a quo* finding accused-appellant FLORENCIO FRANCISCO y ALEJO guilty of the crimes of rape and acts of lasciviousness committed against his 11-year old daughter Ma. Coralyn Jucutan Francisco and imposing upon him the death penalty for the rape and an indeterminate prison term ranging from twelve (12) years and one (1) day of *reclusion temporal* as minimum to fourteen (14) years and nine (9) months of *reclusion temporal* as maximum for the acts of lasciviousness.[1]

Ma. Coralyn lived with her parents Florencio Francisco and Isabelita Jucutan, eight (8) siblings and an aunt in a one-room tenement at Area B, Talanay, Fairview, Quezon City. Florencio was jobless.[2] Isabelita, common-law wife of Florencio, provided for the family by vending vegetables at the *Balintawak* market in the evening and returning home in the morning.[3]

Coralyn's torments started in the evening of April 1997. The Franciscos were all sleeping on the cement floor of the sala with Coralyn being situated nearest the doorway. Her mother had already left the house that evening to sell vegetables and was not expected home until early the following morning. While Coralyn was asleep she was suddenly jolted when someone removed her shorts and panty. It was her father Florencio. He fondled and caressed her and then licked her genitals.[4] She tried to resist him but he pinned her down and angrily warned, "*Huwag kang malikot*, *papaluin kita*."[5] His lewd misconduct was interrupted when Coralyn's aunt, Maria Lourdes Ochavillo, unexpectedly arrived and opened the door. Seizing the opportunity, Coralyn pretended to be going to the toilet to urinate but went instead to her aunt and asked whether she could sleep with her. Afterwards Coralyn confided to her aunt what her father did to her. But her aunt advised her not to tell her mother as it would only cause trouble in the family.[6] Thus Coralyn decided to keep the incident to herself except her aunt.

Her father's prurience had not run its full course. His sexual molestation was to be repeated in a more grievous and loathsome manner than Coralyn's first experience. In the late evening of 27 June 1997 Coralyn was awakened when again her father slowly took off her shorts and panty. He then covered himself and Coralyn with a blanket and while underneath started licking and sucking her genitalia. Now unable to control his libido any longer, Florencio unzipped his *maong* pants and let loose his erectile penis. He mounted Coralyn and poked his penis several times against her

genitalia while nudging her anus in the process.[7] She felt intense pain. She struggled to fend off his lecherous advances but to no avail. Her entreaties for filial pity were ignored. She could only whimper amidst her father's assault on her virtue.

In the afternoon of 6 July 1997 Florencio went home after a drinking spree with friends. He was drunk. Fearing that her inebriated father might sexually violate her again, Coralyn mustered enough courage to relate her sad fate to her mother who immediately accompanied her to the Police Station at Batasan Hills, Quezon City. As no one attended to them there, Isabelita and Coralyn proceeded directly to the Department of Social Welfare and Development which promptly referred them to the National Bureau of Investigation (NBI).

Coralyn and Isabelita both executed a *Sinumpaang Salaysay* before the special investigators of the NBI. Dr. Annabelle L. Soliman, Medical Specialist I of the NBI, conducted a medico-legal examination on Coralyn as a matter of procedure. Dr. Soliman's findings were that no extragenital physical injuries were noted on Coralyn's body at the time of examination, that her hymen was intact, that its orifice was small, thus precluding complete penetration by an average sized Filipino adult male organ in full erection without producing any genital injury.[8]

Thereafter, two (2) separate Informations were filed against Florencio Francisco y Alejo, one for rape[9] and another for acts of lasciviousness.[10] Thereafter the two (2) cases were tried jointly.

In his defense, the accused claimed that at the time of the incidents referred to in the Informations he was working as a mason in a construction site somewhere in Laguna, and that it was the brother of his common-law wife Isabelita, a certain Amoncio Jucutan, who sexually molested Coralyn; alibi and avoidance, in other words.

After trial, the court below found the accused guilty of both crimes of rape and acts of lasciviousness as charged. According to the court -

> The positive testimonies of Coralyn in these two jointly heard cases against her father is (sic) difficult to reject. Coralyn is still young to concoct a lie about so grave a crime as she has posited here. She got on the witness' chair on two, long separate occasions - Jan. 19, 1998 and April 12, 1998 - and was also coming during the scheduled hearings of a rape case x x x if her father the herein accused, were innocent, it appears improbable that Coralyn x x x would have shown such deep interest in the prosecution of these capital cases against their (sic) own blood x x x x

Hence, this automatic review of the rape case where the trial court imposed the death penalty. But how about the case for acts of lasciviousness committed on a separate occasion?

At the outset, we address the threshold question: Does the automatic review of accused-appellant's conviction for rape, for which the death penalty was imposed, include the automatic appeal of his conviction for the less serious crime of acts of lasciviousness?

In the 1983 case of *People v. Panganiban*[11] we ruled that an automatic review of the death penalty imposed by the trial court was deemed to include an appeal of the less serious crimes, not so punished by death, "**but arising out of the same occurrence or committed by the accused on the same occasion, as that giving rise to the more serious offense**." The ruling was based on Sec. 17, par. (1), RA 296, as amended (The Judiciary Act of 1948), which to date has not been repealed and continues to be good law[12] thus -

> Sec. 17. The Supreme Court shall have exclusive jurisdiction to review, revise, reverse, modify or affirm on appeal, as the law or rules of court may provide, final judgments and decrees of inferior courts as herein provided, in -
>
> (1)All criminal cases involving offenses for which the penalty imposed is death or life imprisonment; and those involving other offenses which, although not so punished, **arose out of the same occurrence or which may have been committed by the accused on the same occasion, as that giving rise to the more serious offense**, regardless of whether the accused are charged as principals, accomplices or accessories or whether they have been tried jointly or separately x x x x (*underscoring supplied*).

Panganiban dealt with the types of cases where the facts and circumstances involved in a less serious crime were interlinked and closely interwoven with the facts in the capital cases subject of the automatic review, such that the findings of fact in the latter case would substantially affect the other cases.[13] In those instances it became procedurally sound to include even the less serious crime in the automatic appeal to enable the Court to review the facts as a whole and accordingly evaluate all the evidence for the capital offense as well as the less serious one.[14]

In the instant case, however, it cannot be said that the acts of lasciviousness case "arose out of the same occurrence or committed by the accused on the same occasion" as that of the more serious crime of rape. The two (2) cases involved distinct offenses committed at an interval of two (2) months in point of time. The evidence reveals that the first crime was committed sometime in April 1997 while the second was perpetrated on 27 June 1997. In both cases, accused-appellant was animated by a separate criminal intent, although incidentally, both crimes were directed against the same victim. Moreover, the evidence presented by the prosecution in the rape case was not the same evidence they offered to prove the acts of lasciviousness case.

Inescapably, the penalty of *reclusion temporal* meted out to accused-appellant in Crim. Case No. Q-97-73696 (now G.R. No. 135202) for acts of lasciviousness is within the exclusive appellate jurisdiction of the Court of Appeals.[15] Upon the other hand, Crim. Case No. Q-97-73695 (now G.R. No. 135201) for rape, the penalty imposed therein being death, perforce falls within the jurisdiction of this Court on automatic review.[16]

While we are not unmindful of the practical advantages of a single consolidated review of these two (2) criminal cases, we cannot array any legal justification therefor without infringing upon the jurisdictional boundaries so clearly delineated

by our statutes. Hence, we have no other recourse but to recognize this as a case of split appellate jurisdiction. We cannot infuse new meaning into the provisions of our statutes apportioning appellate jurisdictions between this Court and the Court of Appeals because their mandates and terms are specific and unmistakable. Nor can we widen the scope of our appellate jurisdiction on the basis of the fact that the trial court heard two (2) distinct and separate cases simultaneously. Such procedure adopted by the trial court cannot and did not result in the merger of the two (2) offenses. In fact, a cursory reading of the assailed decision of the court *a quo* reveals with pristine clarity that each case was separately determined by the trial judge, as each should be separately reviewed on appeal. Appellate competence is circumscribed by statute, and not flux and ferment to be settled by the exigencies of trial proceedings.

In fine, it is obvious that accused-appellant's conviction for acts of lasciviousness should have been appealed to the Court of Appeals, instead of elevating the case to this Court which has no jurisdiction over it. Consequently, being with the wrong forum, the appeal in Crim. Case No. Q-97-73696 for acts of lasciviousness erroneously brought to us is dismissed and the decision therein of the court *a quo* stands. With this result, we now limit our review to Crim. Case No. Q-97-73695 for rape where the trial court imposed the death penalty.

Accused-apppellant Florencio Francisco asserts his innocence in the charge of raping his 11-year old daughter Coralyn. He challenges his conviction therefor by theorizing that his daughter's testimonies contain material inconsistencies and that her forensic examination disclosed that she remained a physical virgin, her hymen being intact with no extragenital injury detected.

The Court is not at all swayed by the remonstrations of accused-appellant. As we see it, his arguments boil down to the credibility of the victim's testimony and the weight and sufficiency of the prosecution evidence. The determination of the credibility of witnesses rests largely with the trial court. As we have declared time and again, the trial judge's assessment of the witnesses' testimonies is accorded great respect on appeal in the absence of grave abuse of discretion on the part of the trial judge who has the advantage of actually examining both real and testimonial evidence including the demeanor of the witnesses.[17]

A careful review of the records reveals no cogent reason to depart from the holding of the trial court that Coralyn's positive testimony against her father "is difficult to reject," as she clearly narrated in detail how she was sexually assaulted by him. Her story surely bears the stamp of truth and candor. In a manner that is typical of an inexperienced young lass, she testified -

> Q: You said that your father abused you, will you tell the Court how he abused you?
>
> INTERPRETER: The witness is crying.
>
> A: He would lay on top of me and would suck my private (sic) vagina.
>
> Q: You said that your father would laid (sic) on top of you and lick your vagina, how many times did he do that on that

evening?
A: Several times x x x

Q: You said he lay on top of you and he lick (sic) your vagina, what else did he do?
A: Tinutok (poked) po niya and kanyang ari sa akin.

Q: Was he successful in "pagtutok ng kanyang ari sa iyo?"
A: Yes, sir.

Q: How many times?
A: Several times.

Q: And when you said he poked his penis in your vagina, where did it land?
A: Sometimes on my vagina, sometimes on my anus.

Q: How many times did it land to (sic) your vagina?
A: Several times.

Q: What about in your anus, how many times?
A: Several times also.

Q: What did you feel when your father did that?
A: It was painful, it hurts.

Q: Will you kindly tell us when did he "tutok" his penis to your vagina?
A: June 27, 1997.

Q: And what did you feel when he did that to you?
A: It hurts.

Q: Which was painful?
A: My vagina.[18]

It is indeed extremely hard to disbelieve Coralyn's testimony. She was only an 11-year old girl, guileless and innocent in the ways of the flesh. When asked how her father abused her, tears fell on her cheeks as she recounted the bestial act visited upon her by her own father. There can never be a more eloquent *indicium* of truthfulness than this public baring of grief. Young as she was, it is highly inconceivable that she would concoct such an intricate tale that could put her father to death and drag herself and her family to a lifetime of agony and shame. It is a natural instinct of the typical Filipina to protect her honor, and no Filipina of tender age like Coralyn would make of public knowledge that her own father attempted to rob her of her virtue and chastity unless motivated by a genuine desire to seek redress for the foul deed forced upon her and bring her aberrant father before the bar of justice.[19]

Accused-appellant claims that the victim even slept beside him after the incidents. To him, this is contrary to human nature and that it is unlikely that an abused young girl would act thereafter in a natural fashion.